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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,044	07/15/2003	Srivatsan D.	1-4-2-1-3	7525
7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560				
EXAMINER				
SINKANTARAKORN, PAWARIS				
ART UNIT		PAPER NUMBER		
2416				
MAIL DATE		DELIVERY MODE		
10/07/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/620,044

Applicant(s)

D. ET AL.

Examiner

PAO SINKANTARAKORN

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 12 and 13.
Claim(s) rejected: 1-11 and 14-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Ricky Ngo/
Supervisory Patent Examiner, Art Unit 2616

/Pao Sinkantarakorn/
Examiner, Art Unit 2616

Continuation of 11, does NOT place the application in condition for allowance because:

Regarding page 1-2 of Applicant's Remarks, the Applicant submits that the claimed data structures "provide a particularly efficient mechanism for specifying a wide variety of different types of traffic, without undue limitation as to number of protocols, size or arrival time distribution models, parameter sequences, or other features." Therefore, the Applicant submits that the data structures recited in claims 20 and 21 "impart functionality when employed as a computer component," and are hence functional descriptive material. The Examiner respectfully disagrees. The claimed data structures, alone, cannot provide any result without being executed. The claims merely recite the format of the data structures without any practical application. Thus, the Examiner believes that the U.S.C. 101 rejection should be sustained.

Regarding pages 3-4 of the Applicant's Remarks, the Applicant submits that Gerrevink fails to disclose at least the limitation of claim 1 wherein at least one of a plurality of output interfaces of the traffic generator has two or more of the traffic flows associated therewith. The Examiner respectfully disagrees. The Examiner broadly interprets the Test System 100 as the claim apparatus for generating data traffic, wherein the Test System includes the traffic generator coupled with an equipment under test. Gerrevink teaches the traffic generator programs each output port of the equipment under test with the set of addresses that are to be routed to that output port (see paragraph 52). Also, Gerrevink teaches that, for each test port, the stream generator can support 1) 15 classes, 2) 256 traffic streams, and 3) a minimum of 65536 possible source and destination address pairs (see paragraph 77). Thus, Gerrevink teaches "one of a plurality of output interfaces of the traffic generator has two or more of the traffic flows associated therewith."

Regarding pages 4-5 of the Applicant's Remarks, the Applicant request that the Examiner provide either documentary evidence or an affidavit or declaration setting forth specific factual statements and explanation to support the finding in order for such a rejection to be maintained. Therefore, the Examiner respectfully points the Applicant to the background of the invention of Zhou et al. (US 6,178,456), wherein the background of the invention of Zhou et al. disclose that transmissions typically include a large, global header followed by a series of frames, each having its own header address for the data transmitted in the frame (see column 1 lines 46-49). The motivation for generating a data stream comprising a large, global header followed by a series of frames, each having its own header address of the data transmitted in the frame is that it allows inter-subnet transmission utilizing the global address in the global header.